

UNITED STATES DISTRICT COURT

for the
Northern District of California

PATRICK FERRY, et al.

Plaintiff

v.

DELONGHI AMERICA INC., et al.

Defendant

Civil Action No. 16-CV-00659-SBA

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Environmental Protection Agency Office of the Administrator 1101A
1200 Pennsylvania Avenue N.W., Washington, DC 20460

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Please see attachment 3.

Place: Albert G Stoll, Jr. | A Law Corporation
55 Francisco Street, Suite 403
San Francisco, CA 94133

Date and Time:

08/15/2017 10:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/25/2017

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Patrick Ferry, et al., who issues or requests this subpoena, are:

Walter A. Haynes, IV., 55 Francisco Street, Suite 403, San Francisco, CA 94133, walter@stoll-law.com, 415-762-0040

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

ATTACHMENT 3

This is a request under the Freedom of Information Act. I hereby request copies of the following records:

We are requesting records regarding an EPA consent agreement and final order in 1988 with De'Longhi USA, the manufacturer of oil-filled space heater. See the attached article in the EPA Journal, Vol. 14, No. 4, May 1988, p. 36. The Agency determined that some of approximately 500,000 heaters distributed in the US by De'Longhi had oil contaminated by PCBs. We are also attaching two newspaper articles about the situation, indicating that possibly the original discovery of PCBs was made by Environment Canada.

I am specifically asking for copies of the following:

- 1) Technical documents regarding the extent and nature of the PCB contamination.
- 2) A copy of the Consent Decree and Final Order.
- 3) All correspondence with De'Longhi about the matter.
- 4) All documents regarding the recall of the heaters in question if not included in #3.

I understand that the documents are probably archived and effort will be needed to locate the documents. Note that we briefly spoke with Jenny McLeod in OLEM/ORCR, who indicated that there may be documents in more than one office, including her office. If the documents are voluminous, we might consider viewing the documents before requesting copies. Please let us know the situation if appropriate.

I do have a commercial interest in this request, as I represent a consumer who has filed a legal claim against the manufacturer of the oil filled heater in a fatal fire, and this consumer may have been exposed to PCBs when oil leaked out of the heater. However, there is also a public interest in this request, as other individuals, such as first responders, may have been exposed to the PCB contaminated oil in the incident involving my client. Further, we have determined that certain models of these PCB-contaminated oil filled heaters pose a fire hazard and were recalled by the Consumer Products Safety Commission:

<https://www.cpsc.gov/Recalls/1991/delonghi-voluntarily-to-replace-control-panels-on-oil-filled-electric-heaters>

We have identified a number of other cases in which fires caused by these defective heaters may have released PCB-contaminated oil, possibly exposing other individuals to PCBs. We have also determined that a number of these heaters with PCB-contaminated oil may still be in use by consumers. Therefore, we believe that beyond our commercial interest in the documents, there is an urgent public interest in revealing more information about past and potential future risks associated with these

heaters. We therefore ask that you expedite this request.

I am willing to pay fees for this request up to \$1,000. If you estimate that the fees will exceed this limit, please inform me before processing my request.

If you have any questions regarding this request, please contact me.

I look forward to receiving your response and thank you for your consideration of this request.

Letter to the Editor

ensure progress toward our goal of cleaner air for all American cities. New planning efforts for meeting the ozone or carbon-monoxide standards must begin without delay."

With regard to revision of the clean-air plans, EPA believes that, even before the issuance of a final policy, the states should take certain fundamental steps necessary to continue to make progress in attaining the ozone or carbon-monoxide standards. The states will be required to correct discrepancies between EPA's guidance and the earlier approved State Implementation Plans; to satisfy any unfulfilled commitments in the State Implementation Plan to adopt control measures; and to begin updating the base-year emissions inventory for the defined planning area.

WATER

Acid Rain in Eastern Streams

EPA has said that 2.7 percent (5,429 kilometers) of the combined length of the 500 streams recently surveyed were acidic, with the large majority of the acidity most likely due to acid rain.

This figure is a result of a major research effort to survey streams in the mid-Atlantic and southeastern United States for acid rain damage.

The Agency found that 4.4 percent of the combined length of streams surveyed in the mid-Atlantic were acidic and that almost half (47.6 percent) had a low capacity to neutralize acid and thus might become acidic in the future. Only 0.6 percent of the combined length of streams in the southeastern portion of the survey were acidic, but 49.3 percent had a low capacity to neutralize acidity.

According to Courtney Riordan, Director of the Agency's Office of

Environmental Processes and Effects, "EPA's stream survey is a fully documented, statistically designed survey showing a broader geographical extent of environmental effects from acid rain than we previously realized."

TOXICS

EPA Fines DeLonghi

The Agency has entered into a consent agreement and final order with DeLonghi America, Inc., which requires the company to pay a civil penalty of \$500,000 for importing and exporting oil-filled radiator heaters contaminated with polychlorinated biphenyls (PCBs). The agreement also requires DeLonghi to establish consumer and retailer programs for those who own the PCB-contaminated heaters.

As part of the consent agreement, DeLonghi will send out notices to approximately 70,000 warranty card holders of oil-filled radiator heaters that were manufactured before June 1986 and have the model numbers 5108, 5108T, or 5307. The notices mention that DeLonghi heaters with the serial number 86-20 or lower contain recycled oil and may be contaminated with PCBs. DeLonghi also agreed to set up a toll-free telephone line by the end of June to help consumers and retailers with their questions about the heaters.

DeLonghi imported for domestic sale 485,000 oil-filled radiator heaters, some of which were contaminated with PCBs. DeLonghi then exported approximately 37,500 radiator heaters, some of which were PCB-contaminated. □

Dear Editor:

We wish to take issue with the April 1988 edition of the *EPA Journal* (Vol. 14, No. 3), nominally dedicated to "Agriculture and the Environment."

We were amazed to see that the *Journal* failed to even address a major environmental problem affecting a substantial part of our population: pesticide exposure of farmworkers. Farm laborers are mentioned twice, in passing, in 41 pages of text, and notably omitted from a discussion of "groups...[challenged to achieve] respect for each other's goals" (p. 34).

Such a glaring omission is not an isolated incident in the *Journal*; rather, it is characteristic of EPA itself (farmworker protection concerns also received negligible attention in the *Journal's* May 1987 edition on "Pesticides" [Vol. 13, No. 4]).

Farmworkers (substantially Hispanic) will continue to be invisible to EPA policy-makers as long as EPA continues to avoid placing minority employees in substantive, policy-making roles. Hispanic-American employees now make up about one percent of the substantive policy-making positions in EPA, less than 1/2 of one percent of all Senior Executive Service (SES) positions, and none of the SES positions filled in the last three years.

In the absence of input from a balanced management team, EPA will no doubt continue to suffer the lack of credibility so visibly illustrated by the farmworkers' walkout of EPA's "negotiated" farmworker protection rule-making with farm and agrichemical interests. This lack of balance is nowhere more apparent in the relative importance both EPA and the *Journal* apply to protecting endangered species versus protecting minority farmworkers. In many respects, EPA's proposed pesticide endangered species regulations are more protective of the bluntnosed leopard lizard and the snail kite than regulations protecting minority farmworkers.

EPA has taken steps in recent years to improve its recruitment efforts for entry-level positions. However, at the policy-making level, EPA has failed to integrate either its staff or its approach to environmental problems impacting minority population.

Signed,

Sylvia Correa
Alex Varela
Gary Snodgrass-Hortensio
Mario Salazar

Editor's note: As this issue of EPA Journal went to press, the Agency issued proposed new worker protection regulations that revise and expand the farmworker standards originally established by EPA in 1974. The public is invited to comment on these proposed new standards during a formal comment period that closes the first week in October 1988. A story on the national standards being proposed by EPA is planned for a forthcoming issue of the Journal.

blaze ce approach

been told by Crown Attorney Kim Prost that four charges against him will be dropped May 5 at a preliminary hearing for eight people accused of conspiring to smuggle the protected wild birds. Prost, reached in Winnipeg, said charges will proceed against the others.

Girl killed in twister

MINNEAPOLIS — Thunderstorms spread over the mid-United States yesterday, a day after they unleashed tornadoes in Minnesota and Iowa, killing a four-year-old girl who was sucked out of a pickup truck as her family fled a funnel cloud. At least seven people were injured in the two states by violent winds.

PCBs found in heater

OTTAWA — Owners of electric, oil-filled radiator heaters manufactured outside North America should immediately disconnect and place the units in a secure place because they may contain high levels of PCBs, Environment Minister Tom McMillan said yesterday.

A radiator heater imported from



McMillan: PCBs found

Italy and sold under the brand name De'Longhi Canada was found to contain hazardous PCBs after it sprang a leak. Environment officials were notified and discovered the oil in the heater contained polychlorinated biphenyls (PCBs) at a level of about 900 parts a million.

The company importing the heaters, Somerset Appliances Canada Ltd., of Toronto, has been asked to recall units suspected of containing PCBs, a department statement said.

NewsBank InfoWeb**NewsLibrary**

Estimated printed pages: 3

Docs remaining: 12

Subscription until: 05/20/2017

UPI NewsTrack

June 8, 1988

Section: News

The Environmental Protection Agency said Wednesday it will fine...

Dateline: WASHINGTON

Article Text:

The Environmental Protection Agency said Wednesday it will fine a New York City company \$500,000 for importing and exporting **oil-filled radiator** heaters that were contaminated with polychlorinated biphenyls, or **PCBs**.

Under a consent agreement with the EPA, DeLonghi America Inc. also is required to notify some 70,000 buyers that they may face health risks from leaks of PCB-contaminated oil from some of the heaters.

'Although there have been reports of a limited number of leaks from DeLonghi heaters, their use does not present an unreasonable risk of PCB exposure to the consumer,' the EPA said.

The agency said **PCBs** can cause tumors, skin lesions and stomach and reproductive disorders, however, it added that most of the DeLonghi heaters have low PCB concentrations.

In the event of a leak, the EPA said skin contact with the oil should be avoided during cleanup.

DeLonghi imported for sale in the United States about 485,000 **oil-filled radiator** heaters, some of which contain recycled oil that may be contaminated with **PCBs**. The company then exported for sale abroad approximately 37,500 of the heaters.

Federal law prohibits any commercial activity involving **PCBs** without an exemption from the EPA.

The consent agreement requires DeLonghi to notify holders of warranty cards for heaters manufactured before June 1986 that are model numbers 5108, 5108-T or 5307. The notices will say that DeLonghi heaters with the serial number 86-20 or lower contain recycled oil and may be contaminated with **PCBs**.

In addition, DeLonghi is required to set up a toll-free hotline to answer customer questions and to advise major heater retailers and service centers about how to handle consumer inquiries.

The EPA said it discovered the presence of PCB-contaminated oil in DeLonghi radiator heaters in April 1986 and immediately stopped their importation.

Copyright (c) 1988, United Press International, Inc., All rights reserved.

Record Number: 1988-06-08-5370581745600

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Albert G. Stoll, Jr. | A Law Corporation, 55 Francisco Street, Suite 403, San Francisco, California 94133.

On Tuesday, July 25, 2017, I served a true copy of the following document(s) on the following party:

**PLAINTIFFS' SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS IN A CIVIL ACTION TO THE ENVIRONMENTAL PROTECTION AGENCY**

**Attorneys for Defendants De'Longhi
America, Inc., De'Longhi S.p.A.**


Rudolph V. Pino, Jr., Esq.
Thomas Edward Healy, Esq.
Fitzpatrick & Hunt,
Pagano, Aubert, LLP
50 Main Street, 16th Floor
White Plains, NY 10606
Telephone: 914-946-0600
Facsimile: 914-946-0650
Emails: rudolph.pino@fitzhunt.com
thomas.healy@fitzhunt.com

**Attorneys for Defendant De'Longhi
America, Inc.**

James W. Hunt, Esq.
Stephanie B. Gonzalez, Esq.
Fitzpatrick & Hunt,
Tucker, Pagano, Aubert, LLP
633 West Fifth Street, 60th Floor
Los Angeles, CA 90071
Telephone: 213-873-2100
Facsimile: 213-873-2125
Email: james.hunt@fitzhunt.com

 X by placing the document(s) listed above in a sealed envelope with a postage thereon fully prepaid, in the **United States mail** at San Francisco, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date deposit for mailing in this Declaration.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 25, 2017 at San Francisco, California.



Maya Juergens-Ingle



ALBERT G. STOLL, JR. | A LAW CORPORATION

55 Francisco Street, Suite 403
San Francisco, CA 94133

SAN FRANCISCO
CA 940
26 JUL '17
PM 5:2

AUG 02 2017



Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

20460-



\$ 000.670

02 1P
0000268245 JUL 25 2017
MAILED FROM ZIP CODE 94133

